

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Pilgrim Communications, Inc.)	File Number EB-02-DV-436
)	NAL/Acct. No. 200332800008
Licensee of Station KDMN(AM))	FRN 0006-1624-73
Buena Vista, Colorado)	
Facility ID #1153)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: December 31, 2002

By the District Director, Denver Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Pilgrim Communications, Inc., ("Pilgrim"), licensee of Station KDMN, in Buena Vista, Colorado, apparently willfully and repeatedly violated Section 73.49 of the Commission's Rules ("Rules")¹ by failing to provide an effective locked fence enclosing the station's antenna structure. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),² that Pilgrim is apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000).

II. BACKGROUND

2. During an inspection on October 28, 2002, a FCC agent from the Denver Office inspected the registered antenna structure for AM station KDMN, in Buena Vista, Colorado, (ASR# 1233212), licensed to Pilgrim. The base fencing was constructed close to the tower structure. At the time of the inspection, the agent found the wooden picket base fence damaged, allowing access to the radiating tower with radio frequency potential at the base. In particular, the agent observed large gaps between the wooden pickets that permitted easy contact with the structure by merely reaching through the gaps in the fence. In addition, the agent observed aged broken and damaged pickets that created gaps sufficiently large for a child or small adult to enter the enclosure.

III. DISCUSSION

3. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to

¹ 47 C.F.R. § 73.49.

² 47 U.S.C. § 503(b).

comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.³ The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly and the term "repeated" means the commission or omission of such act more than once or for more than one day.⁴

4. Section 73.49 of the Rules states in part that "[a]ntenna towers having radio frequency potential at the base (series fed, folded unipole, and insulated base antennas) must be enclosed within effective locked fences or other enclosures." Pilgrim's license for KDMN describes the antenna system as a series-excited radiator. A "series excited" radiator may also be described as a "series fed" radiator. The AM transmission fencing requirements thus apply to station KDMN. The October 28, 2002, inspection of the KDMN antenna structure found the fence enclosing the antenna structure to have broken pickets and gaps between pickets, allowing access to the radiating tower. Effective base fencing is an important safety requirement. AM series-fed antenna structures radiate energy that renders any physical contact with the antenna structure itself extremely dangerous. In addition, AM antenna structures are capable of generating radio frequency fields at the base of the antenna structure that may exceed the Commission's maximum permissible exposure guidelines. Effective base fencing is thus important to prevent possible contact with the radiating structure and excessive radio frequency radiation exposure.

5. Based on the evidence before us, we find that Pilgrim, licensee of station KDMN, failed to enclose the AM transmission system with an effective locked fence or other enclosure in willful and repeated violation of Section 73.49 of the Rules. The base forfeiture amount set by *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement"),⁵ and Section 1.80 of the Commissions Rules,⁶ for failure to comply with AM tower fencing is \$7,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act,⁷ which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case, a \$7,000 forfeiture is warranted.

³ 47 U.S.C. § 503(b).

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991). Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

⁵ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁶ 47 C.F.R. § 1.80.

⁷ 47 U.S.C. § 503(b)(2)(D).

IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended,⁸ and Sections 0.111, 0.311 and 1.80 of the Commission's Rules,⁹ Pilgrim is hereby NOTIFIED of an APPARENT LIABILITY FOR A FORFEITURE in the amount of seven thousand dollars (\$7,000) for violation of Section 73.49 of the Rules.

7. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules,¹⁰ within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Pilgrim SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

8. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FCC Registration Number (FRN) and the NAL/Acct. No. referenced in the caption.

9. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and must include the NAL/Acct. No. referenced in the caption.

10. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

11. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operation Group, 445 12th Street, S.W., Washington, D.C. 20554.¹¹

12. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. §§ 0.111, 0.311, 1.80.

¹⁰ 47 C.F.R. § 1.80.

¹¹ See 47 C.F.R. § 1.1914.

this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

13. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by First Class and Certified Mail 7001 0320 0002 9702 9455, Return Receipt Requested, to Gene Hood, Pilgrim Communications, Inc., 54 Monument Circle, Suite #250, Indianapolis, IN 46204.

FEDERAL COMMUNICATIONS COMMISSION

Leo E. Cirbo
District Director, Denver Office

Enclosure: Attachment A